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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34208



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Office of Proceedings

JUL 23 2002

Part of
Public Record

SOO LINE RAILROAD COMPANY
- TRACKAGE RIGHTS EXEMPTION--
HENNEPIN COUNTY REGIONAL RAIL AUTHORITY

SOO LINE RAILROAD COMPANY'S
VERIFIED NOTICE OF TRACKAGE RIGHTS EXEMPTION

MOTION FOR PROTECTIVE ORDER

July 19, 2002

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d/b/a Canadian Pacific Railway

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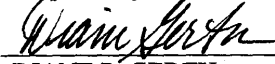
Pursuant to 49 C.F.R. § 1104.14(b), Soo Line Railroad Company, Inc. d/b/a Canadian Pacific Railway ("CPR") hereby submits to the Board under seal a copy of the Trackage Rights Agreement that is being submitted as an Exhibit to CPR's above-captioned Notice of Exemption. CPR hereby moves for a protective order with respect to the Trackage Rights Agreement. The proposed protective order is necessary to protect the commercially sensitive data contained in the document. A redacted version of the Agreement is submitted with CPR's Notice of Exemption for inclusion in the public record.

Accordingly, CPR requests that the Board enter a protective order providing that the unredacted version of the Trackage Rights Agreement be kept confidential and not be made part of the public docket.

Attached to this motion are an original and ten copies of the Trackage Rights Agreement, enclosed in an envelope marked "Confidential Material Subject to a Request for Protective Order", pursuant to 49 C.F.R. § 1104.14(a). Also enclosed are an original and ten copies of the redacted version of the Agreement.

July 19, 2002

Respectfully submitted,



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Redacted Version of Agreement

A16541-1st Supplement

SUPPLEMENT TO
TRACKAGE RIGHTS AGREEMENT

THIS SUPPLEMENTAL AGREEMENT made and entered into this ____ day of _____, 2002 by and between SOO LINE RAILROAD COMPANY, a Minnesota Corporation d/b/a Canadian Pacific Railway (hereinafter referred to as "Soo"), TWIN CITIES & WESTERN RAILROAD COMPANY, a Minnesota Corporation (hereinafter sometimes called "TCW"), and the HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY, a political subdivision and local government unit of the State of Minnesota (hereinafter referred to as "Authority"); hereinafter sometimes referred to individually as the "Party " and sometimes collectively referred to as the "Parties"

WHEREAS, the Parties entered into a Trackage Rights Agreement dated August 10, 1998 granting Soo and TCW operating rights over 2.5 miles of rail trackage and right-of-way owned by the Authority (referred to in the Trackage Rights Agreement and hereinafter referred to as the "Rail Line").

WHEREAS, the Authority has agreed to purchase certain Soo owned property (hereinafter referred to as the "Sale Property") under HCRRA Contract No. A16541 dated December 21, 2001 that extends westerly from HCRRA's 29th Street Corridor at France Avenue to a north south line at the point of connection of the Rail Line with Soo owned trackage over which Soo and TCW presently operate.

WHEREAS, the Authority has agreed to acquire from Soo approximately 330 feet of the Soo owned trackage that traverses the Sale Property (hereinafter referred to as the "Trackage").

WHEREAS, Soo and TCW require a continuation of their right to operate over the Trackage following the Authority's purchase of it in order to maintain a continuous rail route through St. Louis Park and the Authority is willing to grant such operating rights by adding the Trackage and its underlying right-of-way to the length of the Rail Line.

WHEREAS, the Authority has entered into a Permit Agreement No. 73-32001, as amended, with Suburban Hennepin Regional Park District, also known as the Three Rivers Park District (hereinafter referred to as "Parks") granting to Parks the right to construct and operate at no cost to Soo or TCW a trail on Authority owned right-of-way from Hopkins to Minneapolis including the right to cross the Rail Line.

WHEREAS, Authority will acquire the Sale Property and Trackage for future transportation uses, including, without limitations for rail, bicycle and foot travel, and anticipates that such use will include the necessity of crossing the Rail Line or the extension added to the Rail Line by this Supplement.

NOW, THEREFORE, in consideration of the mutual and dependent covenants stated herein, the Parties agree to amend the Trackage Rights Agreement as follows:

A. Substituting the following paragraphs:

1.2 "Rail Line" is defined as the trackage and underlying right-of-way formerly owned by the CNW, extending from a point of connection with BNSF in the City of Minneapolis at or near CNW milepost 13.7, to CNW milepost 16.2 in the City of St. Louis Park and westerly therefrom approximately 330 feet over trackage located on the Sale Properties to a point of connection with Soo owned trackage at or near Soo milepost 428.38, Engineering Station 381.90, at or near CNW milepost 16.3.

1.3 "Rail Corridor" shall mean the area where a right of use is created by this Agreement providing for the operation by Soo and TCW over the Rail Line consisting of a corridor 50 feet in width centered on the Rail Line, except where the Authority does not own sufficient land to provide a 50 foot corridor, and where the Kenilworth Trail as described in Section 1.5 and the SW LRT Connection as described in Section 1.9 is to be located less than 25 feet from the center line of the Rail Line. The Rail Corridor is further described in amended Exhibit A attached hereto and made apart of this Supplemental Agreement.

3.1 The rental for use of the Rail Corridor payable by TCW or Soo, in addition to payment of any expenses provided elsewhere in this Agreement, shall be beginning July 1, 2002 per train mile, for each train operated by either TCW or Soo. To compute charges, the train mile rate shall be multiplied by 2.5625 miles. Any movement of one or more pieces of railroad equipment over the Rail Corridor, except maintenance-of-way equipment and work trains while actually engaged in work on the Rail Corridor, shall be considered a train movement.

3.2 Rent shall be payable to the Authority quarterly. The rate of per train mile shall be adjusted July 1, 2003 and on each July 1 thereafter, by utilization of the Annual Indices of Charge-Out Prices and Wage Rates (1977=100) Series RCR, including in the "AAR Railroad Cost Recovery Index", and supplements thereto, issued by the Association of American Railroads. In making such adjustment, the final "Material prices, wage rates and supplements combined (excluding fuel)" Index for the Western District for the calendar year 2001 shall be compared to the final Index for the calendar year immediately preceding the year in which such adjustment is to become effective.

Said Train Mile Rate shall then be adjusted by the percentage of increase or decrease, as the case may be, in the Index of the year to be escalated as related to the year 2001, provided, however, that said Train Mile Rate shall never be less than If the Association of American Railroads, or any successor organization or association, discontinues such Index, an appropriate substitute for determining in a similar manner the percentage of increase or decrease in the Train Mile Rate shall be agreed upon by the parties hereto.

4.3 The Authority will reimburse TCW for construction, maintenance, repair and renewal costs on an annual basis upon presentation of a complete description of work done and materials used for the preceding calendar year. The Authority shall have the right to audit such billings and to inspect work done upon reasonable notice. The Authority's obligation to reimburse TCW for such costs shall be limited to sixty percent (60%) of the trackage rights fees paid to the Authority by all users for the calendar year during which the maintenance charges were incurred, subject to an authorized minimum expenditure for maintenance cost of per year in any year when trackage rights fees are not sufficient to justify expenditures to that level. The authorized minimum expenditure shall be adjusted annually from : , beginning July 1, 2002 and thereafter in accordance with the formula set forth in Section 3.2 hereof. The authorized expenditures for maintenance, as limited by the foregoing, shall be known as the *Maintenance Allowance*. Any unexpended Maintenance Allowance may be drawn upon in future years for authorized expenditures, including the above minimum expenditure. TCW may draw, as additional Maintenance Allowance, an amount equivalent to a

maximum of 100% of the prior year's rentals as calculated under Section 3, only for the following purposes:

1. To reach the authorized minimum expenditure for maintenance;
or
2. To carry out necessary bridge repairs or repairs to crossing signals.

If at any time the cumulative Maintenance Allowance justified by rental payments and this Section 4.3 are not sufficient to permit the safe and continued operation of the Rail Line, the additional maintenance and repair costs will be borne by the Authority. The Authority shall have no other obligation to reimburse TCW for construction, maintenance, repair or renewal costs, including long-term rehabilitation and capital expenditures.

B. Adding the following paragraphs:

1.9. "SW LRT Connection" shall mean the public trail described in new Exhibit F attached hereto and made apart of this Supplemental Agreement.

2.6. The Parties recognize that it is the intent of Parks to cross the Rail Line at the location and in the manner identified in Exhibit F. Soo and TCW agree that they will not oppose the establishment of said trail crossing.

TCW shall, at the request of the Authority, construct said crossing and thereafter maintain, repair and renew said crossing and Authority or Parks shall reimburse TCW for such construction, maintenance, repair and renewal on an annual basis upon presentation of a complete description of work done and materials used for the preceding calendar year. Authority shall have the right to audit such billings and to inspect work done upon

reasonable notice. Such reimbursement shall be in addition to the reimbursement provided for in Section 4.2 hereof. Such reimbursement shall include the cost of warning signs and any automatic signal protection required by public authority in the future.

2.7. Additionally, the Parties recognize that upon the Authority's acquisition of the Sale Property, the Authority will have a continuous transportation corridor that runs westerly from Hiawatha Avenue in Minneapolis, Minnesota to Hopkins, Minnesota and that the Rail Line will traverse a segment of this transportation corridor. Subject to federal and state regulatory requirements applicable to the Rail Line, Soo and TCW agree that the Authority has a right at its expense to cross, go over and go under this segment for purposes of implementing future transportation uses on the corridor.

2.8 The Authority or Parks shall construct a split rail fence along the Sale Properties as shown on Exhibit F.

2.9 The Authority shall convey a Railroad Easement to TCW in the form shown on Exhibit G attached.

C. This extension of trackage rights to Soo and TCW is contingent upon proper regulatory approvals being obtained and successful completion of the Sale. It shall be effective upon transfer of title of the Sale Property and the Trackage to the Authority.

D. The trackage rights granted Soo and TCW by this Supplemental Agreement are subject to all the terms and conditions of the August 10, 1998 Agreement except as modified by this Supplement.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed in triplicate as of the date first written.

ATTEST:

SOO LINE RAILROAD COMPANY d/b/a
CANADIAN PACIFIC RAILWAY

Title: _____

By _____

Its _____

ATTEST:

TWIN CITIES & WESTERN RAILROAD
COMPANY

Kathleen D. Hedman
Title: ASSISTANT SECRETARY

By William F. Deusch

Its President & CEO

ATTEST:

HENNEPIN COUNTY REGIONAL
RAILROAD AUTHORITY

By _____

Clerk of the Authority Board

By _____

Its Chair

and

By _____

Its Deputy/Executive Director

Approved as to Form and Execution

Assistant Hennepin County Attorney

Date: _____, 2002